S.B. Civil Writ Petition No.1809/01
M/s Ashoka Distilleries & Chemicals Pvt. Ltd.
Vs.
The Rajasthan State Ganganagar Sugar Mills Ltd. & Anr.

22.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri K.M. Mathur for petitioners.
Shri Amit Ratnawat for respondents.

Heard learned counsel for the parties.

Shri K.M. Mathur, the learned counsel for the petitioner in this petition has challenged the orders dated 27.5.97 and 16.7.97 and has prayed that the action of the respondents in deducting a sum of Rs.5,44,740.35 on account of excise duty in respect of wastage/loss of rectified spirit during transit be declared illegal and they be

directed to refund the same with interest.

Shri Amit Ratnawat, the learned counsel for the respondents placed reliance on the judgment of the co-ordinate bench of this Court in M/s Rampur Distillery Vs. The Rajasthan State Ganganagar Sugar Mills Ltd. & Anr. and has submitted that the controversy raised in the present matter is squarely covered by the aforesaid judgment in which this Court has directed as under:-

> “In the result, these writ petitions succeed in part. It is declared that the respondent no.1 is not entitled to again realize any duty or tax on the wastage which occurred during transit loss of the rectified spirit. As regards to the refund of the amount, it is not as a matter of

course or right it can be ordered. In case this amount of excise duty is required from the petitioner to pass-over to the supplier, it is not refundable to the petitioner. In such matter if the refund thereof is ordered it may result in unjust enrichment of the petitioner. This refund can only be made to the petitioner where he establishes to the satisfaction of the authorities that the same is not passed over to the sufferer or the consumer. For this refund of the amount, the petitioner is free to submit an application to the respondent no.2, the Excise Commissioner, Government of Rajasthan, Udaipur and he will decide the same in accordance with law."

The writ petition is accordingly disposed of in terms of the aforesaid

directions with a liberty to the petitioner to make an application to the Excise Commissioner, Jaipur within four weeks who shall decide the same within three months from the date of its receipt in accordance with law.

(Mohammad Rafiq),J.

Rs/-